

[Proposed] Order to Plaintiffs'
Motion to Exclude Portions of
Rebuttal Expert Report of
Konstantinos Psounis

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19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**

21 CHASOM BROWN, WILLIAM BYATT,
22 JEREMY DAVIS, CHRISTOPHER
23 CASTILLO, and MONIQUE TRUJILLO
24 individually and on behalf of all others
25 similarly situated,

26 Plaintiffs,

27 v.

28 GOOGLE LLC,

29 Defendant.

Case No.: 4:20-cv-03664-YGR-SVK

30 **[PROPOSED] ORDER GRANTING**
31 **MOTION TO EXCLUDE PORTIONS OF**
32 **THE REBUTTAL EXPERT REPORT OF**
33 **KONSTANTINOS PSOUNIS**

34 Judge: Hon. Yvonne Gonzalez Rogers

35 Date: September 27, 2022

36 Time: 2:00 p.m.

37 Location: Courtroom 1 – 4th Floor

1 Before the Court is Plaintiffs' Chasom Brown, William Byatt, Jeremy Davis, Christopher
 2 Castillo, and Monique Trujillo, on behalf of themselves and all others similarly situated
 3 ("Plaintiffs") Motion to Exclude Portions of the Rebuttal Expert Report of Konstantinos
 4 Psounis. On June 7, 2022, Defendant Google LLC ("Google") served the expert report of Dr.
 5 Psounis. In this report, Dr. Psounis provided 13 opinions purporting to rebut the opinions
 6 rendered by two experts proffered by Plaintiffs: Mr. Hochman and Mr. Schneier. On August 23,
 7 2022, Plaintiffs filed the present motion to exclude Psounis opinions 1, 3, and 7-10, all of which
 8 attempt to rebut opinions proffered by Mr. Hochman.

9 Upon full consideration of this matter, the Court holds that opinions 1, 3, and 7-10 of Dr.
 10 Psounis's report should be excluded. Google has failed to sustain its burden to show these
 11 opinions are the product of "reliable principles and methods" that have been "reliably applied."
 12 Fed. R. Evid. 702; *see also* *Shelton v. Air & Liquid Sys. Corp.*, 2022 WL 2712381, at *1 (N.D.
 13 Cal. July 11, 2022) (Gonzalez, Rogers, J.) ("The proponent of expert testimony has the burden
 14 of proving admissibility in accordance with Rule 702."). In preparing his opening expert report,
 15 Mr. Hochman ran tests on over [REDACTED] entries from [REDACTED] of the [REDACTED] data sources Google itself
 16 identified as relevant. Hochman Report App. G ¶ 25. In contrast, Dr. Psounis ran no tests at all,
 17 and only reviewed data from [REDACTED] of the [REDACTED] relevant data sources, and then improperly
 18 extrapolated based on that narrow analysis. This is insufficient. *See In re Roundup Prod. Liab.*
 19 *Litig.*, 390 F. Supp. 3d 1102, 1112 (N.D. Cal. 2018) ("[U]njustified extrapolations from existing
 20 data can require the Court to exclude an expert."); *see also* *Young v. Cree Inc.*, 2021 WL 292549,
 21 at *5 (N.D. Cal. Jan. 28, 2021) (Gonzalez Rogers, J.) (excluding as unreliable testimony from
 22 expert that merely "grouped together similar Cree LED bulbs, tested a fraction of them, and then
 23 extrapolated his conclusions across a wide array of Cree products.").

24 Moreover, the limited analysis included within Dr. Psounis's report was conducted by
 25 Google's counsel, not Dr. Psounis, independently rendering his opinions unreliable and subject
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1 to exclusion. *See Baker v. FirstCom Music*, 2018 WL 2572725, at *5-6 (C.D. Cal. Mar. 27, 2018)
2 (Under *Daubert*, “experts are expected to verify the reliability of the data underlying their
3 conclusions independently instead of simply adopting the representations of an interested party”).

4 Finally, as Dr. Psounis did not even attempt to disprove the Hochman data analysis he
5 purports to rebut, his opinions fall outside the scope of proper rebuttal testimony and are,
6 therefore, untimely. *See Dkt. 465; People v. Kinder Morgan Energy Partners, L.P.*, 159 F. Supp.
7 3d 1182, 1192-93 (S.D. Cal. 2016) (excluding as untimely expert testimony that failed to
8 constitute proper rebuttal report).

9
10 It is therefore

11 **ORDERED, ADJUDGED, and DECREED:**

- 12 1. Court **GRANTS** Plaintiffs’ Motion to Exclude Portions of the Rebuttal Expert Report
13 of Konstantinos Psounis.

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15 **IT IS SO ORDERED.**

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17 Dated: _____

18 _____
19 The Honorable Yvonne Gonzalez Rogers
20 United States District Judge
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